

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

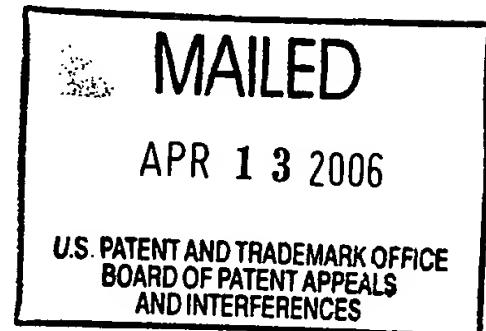
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte DAVID L. KINARD, G. FRANKLIN VAUGHN Jr., SOLOMAN BEKELE, and CHARLES KANNANLERIL

Appeal No. 2005-1969
Application No. 09/933,291

ON BRIEF



Before KIMLIN, WALTZ, and TIMM, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1, 5-10, and 13-24. Claim 12, the only other claim pending in the application, stands objected to as dependent on a cancelled claim (Answer, p. 2). We have jurisdiction over the appeal pursuant to 35 U.S.C. § 134.

INTRODUCTION

The claims are directed to a case-ready package for containing a food product (see claim 1), a packaged product comprising a food product in a case-ready package (see claim 21), and a process for making a case-ready package (see claim 23).

According to the specification, “the invention pertains to the packaging of food products which exude juice, such as meat products, with the package containing an absorbent pad for soaking up the excess liquid.” (specification, p. 1, ll. 2-4). In particular, according to the specification, “the invention is particularly directed to a package designed to be placed into a display case for sale, i.e., a ‘case-ready’ package.” (specification, p. 1, ll. 4-5). Claim 1 is illustrative of the subject matter on appeal:

1. A case-ready package for containing a food product which exudes juice, comprising:
 - (A) a support member,
 - (B) a lid member comprising a flexible film; and
 - (C) an absorbent pad comprising:
 - (i) an upper web comprising a flexible film;
 - (ii) a liquid-permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member selected from the group consisting of polyolefin, polyamide, and polyester; and
 - (iii) an absorbent layer between the upper web and the lower web;

wherein the upper and lower webs each extend outward of the absorbent layer, the upper and lower webs being attached to one another around an entire outer perimeter portion of the pad, with the upper and lower webs together surrounding and containing the absorbent layer, and the case-ready package further comprising modified atmosphere or vacuum between the support member and the lid member.

The Examiner rejects the claims under 35 U.S.C. § 103(a). As evidence of unpatentability, the Examiner relies upon the following prior art references:

Miller et al. (Miller)	US 4,321,997	Mar. 30, 1982
LeKhac	US 4,743,244	May 10, 1988
Bair	US 5,135,787	Aug. 4, 1992
Sanfilippo et al. (Sanfilippo)	US 6,221,411 B1	Apr. 24, 2001
Wiles	GB 2,296,905 A	Jul. 17, 1996
Darnett	WO 97/30909	Aug. 28, 1997

The specific rejections maintained are:

1. Claims 1, 6-10, 14-18, 21, and 22 rejected under 35 U.S.C. § 103(a) as unpatentable over Sanfilippo in view of Darnett;
2. Claim 5 rejected under 35 U.S.C. § 103(a) as unpatentable over Sanfilippo in view of Darnett and further in view of Wiles;
3. Claim 13 rejected under 35 U.S.C. § 103(a) as unpatentable over Sanfilippo in view of Darnett and further in view of Miller;
4. Claims 19 and 20 rejected under 35 U.S.C. § 103(a) as unpatentable over Sanfilippo in view of Darnett and further in view of Bair and LeKhac; and

5. Claims 23 and 24 rejected under 35 U.S.C. § 103(a) as unpatentable over Sanfilippo in view of Darnett.

Because the Examiner's rejections are based on an unreasonable interpretation of "composition", we reverse. Further, we remand the application to the Examiner for a review of the prior art and the rejections in light of the correct interpretation of the claim terminology. Our reasons follow.

OPINION

Reversal of the Rejections on Appeal

The determinative issue in this case centers on the interpretation of the word "composition" in claims 1, 21, and 23, the independent claims on appeal. This is because the Examiner makes a finding that viscose fibers taught by Darnett are a "composition" within the meaning of the claims but Appellants argue that the viscose fibers are not a "composition" as claimed.

In order to properly decide the issue, we first look to the claim language. The claims all require "a liquid-permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member selected from the group consisting of polyolefin, polyamide, and polyester." (see claims 1, 21, and 23). The key language here is "having a hydrophilic *composition* thereon."

The Examiner has not placed on the record an affirmative statement regarding how the claim language is being interpreted. Rather, we must read between the lines of the rejection and the response to argument to determine the Examiner's thinking on the matter. Looking to the Answer, we note that the Examiner finds that Darnett describes an absorbent pad having the required lower non-woven fiber layer having a hydrophilic composition thereon (i.e. viscose) (Answer, p. 4). The Examiner further explains, in the Response to Argument section of the Answer, that:

DARNETT teaches the sheets used for the pad comprise a blend of cellulose fibers and thermoplastic fibers with one example including a bottom sheet made from a polyester fiber and viscose fiber blend. As indicated in the rejection, the viscose portion was understood to be the hydrophilic composition. The fibers, blended together, would meet the limitation of a nonwoven fiber (e.g. polyester fibers) with a hydrophilic composition (viscose fibers) thereon, since a mixture would result in viscose fibers being "on" the polyester fibers.

(Answer, pp. 9-10). From the above statements, we determine that the Examiner is interpreting "hydrophilic composition" to encompass viscose fibers "on" polyester fibers. This interpretation of "hydrophilic composition" is at odds with the commonly accepted meaning of "composition". As the term is generally used, it refers to a mixture of substances. See *PIN/NIP Inc. v. Platte Chemical Co.*, 304 F.3d 1235, 1243, 64 USPQ2d 1344, 1349-50 (Fed. Cir. 2002) ("The term 'composition' in chemistry is well-established. It generally refers to mixtures of substances."). That being said, it is necessary to look to the specification to determine if Appellants gave "composition" a

meaning different from the ordinary and accustomed meaning. "As an initial matter, the PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 127 F.3d 1048, 1053-54, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

Looking to the specification, we find a discussion of the hydrophilic composition on page 15 in the last paragraph. According to that paragraph, a hydrophilic composition is applied to the hydrophilic fiber from which the lower web is formed. Although any hydrophilic composition could be used, preferred compositions include Cirracol® PP842 fiber finish. The word "composition" is used in the specification in a manner with the normally accepted meaning, i.e., as a mixture of substances. The Examiner points to, and we do not find, any indication that Appellants intended a meaning different from the commonly accepted meaning for the term "composition."

In light of the above discussion, we determine that the Examiner's interpretation of "composition" was unreasonable in light of the evidence of record. The polyester and viscose fiber blend of Darnett cannot be said to be a "nonwoven fiber having a hydrophilic composition thereon" within the meaning of the claims.

Because Darnett does not describe the necessary “hydrophilic composition” as required by all the claims, the Examiner has failed to establish a *prima facie* case of obviousness with respect to the subject matter of all the claims on appeal. As only Darnett was relied upon to meet the “composition” requirement, it is unnecessary to discuss the other references.

Remand to the Examiner

Because the error resides in claim interpretation, it is incumbent on the Examiner to re-evaluate the prior art and the rejections in light of the correct claim interpretation. In this vein, we note that the Examiner cites Bair as teaching the application of wetting agents to a nonwoven polyester fiber web to impart hydrophilic character (Answer, p. 7). Bair describes treating outer fabric layers of a water-absorbing pad with wetting agent to enhance wicking and absorption of liquids in an absorbent pad. The fabric can be non-hydrophilic (e.g. polyesters, polyolefins) (Bair, col. 4, l. 46 to col. 5, l. 2). A wetting agent is a “composition” within the meaning of the claims. The Examiner should consider this reference as well as others teaching the application of hydrophilic compositions to nonwoven fibers in re-evaluating the patentability of the claims.

CONCLUSION

To summarize, the decision of the Examiner to reject claims 1, 5-10, and 13-24 under 35 U.S.C. § 103(a) is reversed and the application remanded to the Examiner for action consistent with the above discussion.

This remand to the examiner pursuant to 37 CFR § 41.50(a)(1) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)) is not made for further consideration of a rejection. Accordingly, 37 CFR § 41.50(a)(2) does not apply.

REVERSED AND REMANDED

Edward C. Kimlin
EDWARD C. KIMLIN
Administrative Patent Judge

Thomas A. Waltz
THOMAS A. WALTZ
Administrative Patent Judge

Catherine Timm
CATHERINE TIMM
Administrative Patent Judge

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